

REMARKS

I. Claim Status

Claims 1, 2 and 5-7 were previously cancelled. Claims 3, 4 and 8-11 are pending and stand rejected. Claims 3 and 11 have been amended. Claim 8 has been cancelled without prejudice or disclaimer, and retaining the right to represent the claim in a subsequent continuation application. New claim 12 has been added.

Claim 3 has been amended to incorporate the limitation found in now cancelled claim 8. Claims 3 and 11 have been amended to proper Markush language. Additionally, claims 3 and 11 have been amended for clarity to define “agricultural chemical” to be an insecticide, fungicide or herbicide, instead of having the phrase “insecticidal, fungicidal or herbicidal activity”.

No new matter has been added.

II. Claim Rejections under 35 U.S.C. § 103(a)

Claims 3, 4 and 8-11 stand rejected under 35 U.S.C. § 103(a) as obvious over Suzuki et al. (U.S. Patent 5,980,926) in view of Hoy et al. (U.S. Patent 5,208,030).

The Examiner contends that Suzuki teaches a water dispersible granule formulation made by (a) admixing an active agent (*e.g.*, triflumizole), a wetting and dispersing agent (*e.g.*, tristyril phenyl ether, ethylene oxide, sodium polycarboxylate), and water; then subjecting the mixture to wet granulation to produce “WDG-SC” with an average particle size of 1.5 microns; (b) admixing a wetting and dispersing agent (*e.g.*, sodium alkylnaphthalenesulfonate, sodium alkylbenzenesulfonate, a

formaldehyde condensate of sodium liginsulfonate, a mineral carrier such as diatomaceous earth) and a second active agent (*e.g.*, potassium chloride); then subjecting the mixture to dry milling to produce “WDG-WP”; (c) mixing “WDG-SC” and “WDG-WP” and then granulating and drying the mixture.

The Examiner also contends that Suzuki teaches any pesticide which is a solid at ambient temperature, and is hardly soluble in water, can be used; and, two or more of these pesticides may be used in combination. Suzuki lists specific pesticides that can be used.

The Examiner also states that, in the instant claims, the terms “first active ingredient” and “second active ingredient” are subject to the broadest reasonable interpretation. The Examiner contends that the terms are undefined in the instant specification, and that there are a number of disclosed and undisclosed ingredients that read on these two terms. Therefore, the Examiner has concluded that, for example, the second active ingredient could be potassium chloride.

The Examiner acknowledges that Suzuki is silent as to the average particle size of about 3 microns to about 30 microns of the instant second active ingredient.

The Examiner contends that Hoy teaches an active ingredient dosage device and a method of making such a device. The Examiner further contends that Hoy teaches including “at least one active ingredient” and comminuting the active ingredient to an average particle size of less than 5 microns, which may be achieved by dry milling (*e.g.*, micronization). The Examiner further contends that Hoy’s “less than 5 microns” reads on the instant “about 3 to about 30 microns”, since the ranges overlap.

The Examiner acknowledges that Suzuki is silent as to a second active ingredient that is an agricultural chemical being an insecticide, fungicide or herbicide.

The Examiner concludes that, because both Suzuki and Hoy teach products comprising various pesticides which utilize similar ingredients and include similar methods for the same purpose, it would have been obvious to include one or more pesticides in one multi-purpose dosage device in order to eliminate a wider range of pests and/or fungi. Applicants respectfully traverse.

Claim 8 has been cancelled without prejudice or disclaimer.

As described in our argument in the response to last Non-final Office Action, Suzuki et al. teaches only the method of making a water dispersible granule formulation by:

- (a) admixing an active agent and others to produce “WDG-SC”; and
- (b) admixing an dispersing agent and a mineral carrier to produce “WDG-WP”;
- (c) mixing “WDG-SC” and “WDG-WP”.

However, Suzuki does not teach the method to use a first active agent and a second active agent which is an *agricultural chemical selected from the group consisting of an insecticide, a fungicide and a herbicide*, as in currently amended Claim 3. Suzuki therefore provides no suggestion or motivation to the process of the currently amended Claim 3 where the second active agent is chosen from an insecticide, a fungicide and a herbicide. The Examiner has stated that the mineral carrier (e.g., potassium chloride) is “a second active agent” relative to “the active agent” in Suzuki’s step (a) above (which is called “the first active agent” by the Examiner). The Examiner is therefore reading that potassium chloride is “a second active ingredient”, because it is the position of the Examiner that potassium chloride can be used as a fertilizer which is one of an agricultural chemical. Without conceding the correctness of the Examiner’s position or the need for amendment, Claims 3 and 11 have been amended so that the second active agent is chosen from an insecticide, a fungicide and a

herbicide. Since potassium chloride is neither an insecticide, a fungicide nor a herbicide, Suzuki provides no suggestion or motivation to have a second active agent as an insecticide, fungicide or herbicide.

The currently amended Claim 11 is further restricted in the scope of the first active ingredient, and the new added Claim 12 is further restricted by using several specific agricultural chemicals other than a fertilizer. Suzuki provides no suggestion or motivation to the processes described in amended claim 11 or the new claim 12.

As a result, there are at least two differences from Suzuki in the instant independent claims 3, 11 and 12:

- (1) a different kind of an active ingredient used as the second active ingredient;
- and
- (2) a different particle size of the second active ingredient.

Hoy does not teach, suggest or provide a motivation to combine these two differences with Suzuki and arrive at the present invention.

Applicants contend that Suzuki, either alone or in combination with Hoy, provides no suggestion or motivation to arrive at the processes described in the amended claims 3 and 11 and new claim 12. Reconsideration and withdrawal of the rejection is respectfully requested.

CONCLUSION

In view of the foregoing amendments and remarks, applicant believes the pending application is in condition for allowance, and earnestly solicits same. It is believed that no fees are required for the filing of this submission; however, if any fees should be required, the Commissioner is hereby authorized and requested to charge any such fees, up to a maximum of \$300, to Darby and Darby Deposit Account No. 04-0100.

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Respectfully submitted,

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